

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

MATTHEW VANDERHOOP,
Plaintiff

v.

**WILMINGTON SAVINGS FUND
SOCIETY FSB, CHRISTIANA
TRUST, NOT IN ITS INDIVIDUAL
CAPACITY, BUT SOLELY AS
TRUSTEE FOR BCAT 2014-10TT,
Defendant**

Civil Action No. 1:18-CV-11924-FDS

**MOTION IN OPPOSITION TO DEFENDANT’S
MOTION TO DISMISS FIRST AMENDED COMPLAINT**

Plaintiff, Mr. Matthew Vanderhoop, hereby submits this Motion in Opposition to Defendant’s motion to dismiss Mr. Vanderhoop’s *First Amended Complaint and Motion for Temporary Restraining Injunction for Protection from an Unlawful Foreclosing Auction*, pursuant to M.G.L.c. 35B.

In support of this Motion, Mr. Vanderhoop states that he has alleged sufficient facts in his *Amended Complaint* that have facial plausibility, and that his *Amended Complaint* alleges legally cognizable injuries, upon which relief can be granted. Defendant has, therefore, failed to meet its burden, and is not entitled to a motion to dismiss.

Further, Mr. Vanderhoop has been prejudiced and unfairly denied critical information and the barest of evidence needed for him to effectively prepare this defense against defendant’s motion

to dismiss his amended complaint, as defendant has willfully and unjustly refused to provide Mr. Vanderhoop with an answer to either his original complaint, filed on August 22, 2018, or to his amended complaint, filed on November 29, 2018, over thirty (30) days ago.

Mr. Vanderhoop filed his original complaint in Edgartown Superior Court on August 22, 2018. Defendant responded to plaintiff's complaint, on October 15, 2018, with a motion to dismiss Mr. Vanderhoop's complaint, for failure to state a claim. Defendant's motion was denied by this honorable court on November 13, 2018. Still, defendant filed no answer to Mr. Vanderhoop's complaint, contrary to Mass.R.Civ.P.12.

Mr. Vanderhoop filed an Amended Complaint on November 29, 2018, and defendant has again, despite the unambiguous laws of the state and federal courts of the Commonwealth of Massachusetts, failed to file an answer to Mr. Vanderhoop's amended complaint, but has instead, filed, again, a Motion to Dismiss, and refused to provide Mr. Vanderhoop with the critical information to which he is legally entitled, and that is needed if plaintiff is to effectively respond to defendant's motion to dismiss.

As defendant is aware, an amended complaint is governed by Mass.R.Civ.P. 15, not Mass.R.Civ.P.R. 12, and Rule 15 does not toll the time by which defendant is legally required to provide Mr. Vanderhoop with an answer to his complaint. More importantly, without defendant's answer to Mr. Vanderhoop's amended complaint, this honorable court is called to make a ruling in this case where the pleadings are incomplete because instead of providing an answer to plaintiff's amended complaint, defendant has filed a motion to dismiss, with many

exhibits attached to said motion, in complete disregard for Massachusetts state law and federal law: motions are not pleadings.

The attention of the Court is respectfully directed to Mr. Vanderhoop's *Memorandum of Law in Opposition to Defendant's Motion in Opposition to Dismiss*, filed herewith, and to arguments to be properly presented in support of the requested relief of this motion.

WHEREFORE, Mr. Vanderhoop, respectfully, request that this honorable court enter an order to:

1. Deny Defendant's motion to dismiss Mr. Vanderhoop's *Amended Complaint and Motion for Temporary Restraining Injunction for Protection from an Unlawful Foreclosing Auction of his Home, G.L.c. 244, §35B*.
2. Grant Mr. Vanderhoop's request for a Preliminary Injunction to refrain Defendant from scheduling or holding a foreclosure auction sale of Mr. Vanderhoop's home until a trial on the merits.
3. Grant Mr. Vanderhoop's request for a Permanent Injunction to refrain Defendant from scheduling or holding a foreclosure auction sale of Mr. Vanderhoop's home until a trial on the merits.
4. Compel defendant to answer, forthwith, Mr. Vanderhoop's First Amended Complaint or hold defendant in default for its willful refusal.

5. Grant Mr. Vanderhoop any other such further relief as is just and equitable.

January 3, 2019

Respectfully submitted,
MATTHEW VANDERHOP
By his attorney,

“/s/”Deborrah M. Doman
Deborrah M. Dorman, Esq., #635729
Law Office of Deborrah M. Dorman
Post Office Box 944
Tisbury, MA 02568
(774) 563-0040
dormandmd@aol.com

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CERTIFICATE OF SERVICE

I, Deborrah M. Dorman, certify that Plaintiff's *Motion in Opposition to Defendant's Motion to Dismiss Amended Complaint* was filed today, January 3, 2019, through the ECF system to be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

January 3, 2019

Respectfully submitted,
By his attorney,

"/s/"Deborrah M. Dorman
Deborrah M. Dorman, Esq., #635729
Law Office of Deborrah M. Dorman
Post Office Box 944
Tisbury, MA 02568
(774) 563-0040
dormandmd@aol.com